

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING
PHARMACY, INC., PRODUCTS LIABILITY
LITIGATION

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) MDL No.: 2419

) Master Docket No.: 1:13-md-2419-FDS

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THIS DOCUMENT RELATES TO:

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All actions.

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DECLARATION OF BENJAMIN A. GASTEL

Benjamin A. Gastel declares, under penalty of perjury on the date identified below, as follows:

1. I am an attorney at Branstetter, Stranch, and Jennings, PLLC, and our firm sits on the Plaintiffs Steering Committee “(PSC)” in the above-styled lawsuit (the “MDL”). I make this declaration as part of the PSC’s Response in Opposition to Dr. Jones Motion for Specific Ruling, filed contemporaneously herewith (the “Response”). I was the attorney principally charged with serving subpoenas to Tennessee Clinics on behalf of the PSC.

2. The FDA identifies PCA Pain Care Center (“PCA Pain Care”) as receiving NECC-manufactured MPA; and the CDC website identifies PCA Pain Care Center as one of three Tennessee clinics confirmed to have received tainted MPA lots.¹

3. According to the Tennessee Secretary of State’s (“SOS”) website, PCA Pain Care Center is an assumed name of Total Healthcare Consultants, PLLC. A copy of the relevant pages from the SOS website are attached as Exhibit 1. At the time the PSC originally issued the subpoena to PCA Pain Care, Total Healthcare Consultants PLLC was an active entity in the State

¹ These websites are located at:

<http://www.fda.gov/downloads/Drugs/DrugSafety/FungalMeningitis/UCM326145.xls>;

<http://www.cdc.gov/hai/outbreaks/meningitis-facilities-map.html>

of Tennessee with its authorized agent, Joy Day, located at 200 New York Avenue, Suite 320, Oak Ridge, TN 37830, which is the address from which PCA Pain Care operated its pain care facility. According to the Secretary of State's website, the State administratively dissolved Total Healthcare Consultants PLLC in August 2013.

4. Comprehensive Pain Specialists now operates the facility located at 200 New York Avenue, Suite 320, Oak Ridge, TN 37830. According to the Secretary of State's website, Comprehensive Pain Specialists is an assumed name of Anesthesia Services Associates, PLLC. A copy of the relevant page from the SOS website is attached as Exhibit 2.

5. These four entities (PCA Pain, Total Healthcare Solution, Comprehensive Pain Specialists, Anesthesia Services Associates) have or are currently operating a pain care clinic at the facility at 200 New York Avenue, Suite 320, Oak Ridge, TN 37830, and it was unclear at the time the PSC served subpoenas last summer, which was the proper entity to serve.

6. Accordingly, on July 8, 2013, the PSC issued a subpoena on PCA Pain Care Center via its registered agent Joy Day. This subpoena was returned as undeliverable as the registered agent was not to be found at the designated address, although the Secretary of State continued to show that Joy Day was the registered agent of service for this entity. A copy of the subpoena along with the returned envelope is attached as Exhibit 3. The PSC researched Joy Days residing in or around Oak Ridge, Tennessee and sent a process server to the only Joy Day living within a reasonable distance of Oak Ridge, Tennessee. However, that Joy Day told the process server that she was not affiliated with PCA Pain Care Center and the subpoena was not served upon her.

7. According to the Tennessee Department of Health, Dr. Donald Jones is listed as the medical director of both PCA Pain Care and Comprehensive Pain Specialists, both of which

are licensed to operate a pain management clinic at the facility located at 200 New York Avenue, Suite 320, Oak Ridge, TN 37830. A copy of the relevant portions of the Tennessee Department of Health website identifying Dr. Jones as such is attached as Exhibit 4.

Executed on this 6th day of December, 2013, in Nashville, Tennessee.



Benjamin A. Gastel